

**CASE NO. 16-2297 [Consolidated with 16-3162 and 16-3271]****UNITED STATES COURT OF APPEALS****FOR THE SEVENTH CIRCUIT**

<p>COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE,</p> <p>Petitioner,</p> <p>No. 16-2297 v.</p> <p>NATIONAL LABOR RELATIONS BOARD,</p> <p>Respondent,</p> <p>and</p> <p>HOBBY LOBBY STORES, INC.,</p> <p>Intervening Respondent.</p>	<p>Petition for Review of an Order of the National Labor Relations Board</p> <p>No. 20-CA-139745</p>
<p>HOBBY LOBBY STORES, INC.,</p> <p>Petitioner,</p> <p>No. 16-3162 v.</p> <p>COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE,</p> <p>Intervening Respondent,</p> <p>and</p> <p>NATIONAL LABOR RELATIONS BOARD,</p> <p>Respondent.</p>	<p>Petition for Review of an Order of the National Labor Relations Board</p> <p>No. 20-CA-139745</p>

<p>NATIONAL LABOR RELATIONS BOARD,</p> <p>Petitioner,</p> <p>No. 16-3271 v.</p> <p>HOBBY LOBBY STORES, INC.,</p> <p>Respondent,</p> <p>and</p> <p>COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE,</p> <p>Intervening Petitioner,</p>	<p>Petition for Review of an Order of the National Labor Relations Board</p> <p>No. 20-CA-139745</p>
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APPEAL OF DECISIONS OF NATIONAL LABOR RELATIONS BOARD  
363 NLRB No. 195, 20-CA-139745

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REPLY TO NLRB'S OPPOSITION TO REQUEST FOR JUDICIAL NOTICE AND  
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

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COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE

1. The National Labor Relations Board opposes the request for Judicial Notice. Some explanation of the procedural history is relevant. The case which is before this Court on review began as an unfair labor practice charge filed on October 28, 2014. The Administrative Law Judge issued her decision on September 8, 2015. The Board then issued its Decision and Order on May 18, 2016. The Committee has requested Judicial Notice of documents from a related case involving handbook rules which began with an unfair labor practice charge filed initially on June 15, 2015 while the above case was pending. The Region issued Complaint in this new matter and that matter was submitted to an Administrative Law Judge based on a stipulated record and briefing. While it was pending decision, Hobby Lobby settled and agreed to rescind the offending rules and post an appropriate notice. It is the settlement agreement from that case involving the handbooks which are part of the record in this case (J. A. 58-172) which is the subject of the Request for Judicial Notice.

2. As the Board concedes, the Mutual Arbitration Agreement at issue in this case is part of the employee handbooks. (J.A. 66, 106, 108-109, 125-126, 166 and 168-169) To be clear, that policy which is at issue in this Court is imbedded in and part of the employee handbooks. Certainly the handbooks and the rules contained therein are relevant because Hobby Lobby and the Board agreed to their relevance as part of the record. The handbooks refer to the policy in the midst of other policies.

3. As we have argued in our opening brief, those Hobby Lobby policies interfere with the concerted right of employees to use the procedure required by the Mutual Arbitration Agreement. For example the confidentiality policy (J. A. 31 and 142) would prohibit employees from sharing or using information in such an arbitration procedure. Moreover, those handbooks make it clear that the Mutual

Arbitration Agreement will be enforced by discipline. (J.A. 83 and. 141). Thus Hobby Lobby's settlement of related NLRB charges that the handbook provisions are illegal is directly relevant.

4. We recognize that there will be an issue before this Court which the Board and Hobby Lobby may brief as to the scope of the Complaint before the Board and therefore the relevance of some of the provisions the handbooks. That issue, however, goes to the merits of this case and not the procedural question of whether judicial notice should be granted of the concession by Hobby Lobby that these rules were invalid and that they have been rescinded.

5. The Committee has also raised the application of the Religious Freedom Restoration Act. Because the Handbooks contain part of the record on which that argument is based, they are relevant. (J. 59 and 118-119). The handbooks express the religious purpose of Hobby Lobby. These expressions are part of Hobby Lobby's policies although not part of the settlement agreement.

6. The Committee responds that the issue of judicial notice should be referred to the Merits Panel which hears this case. Only after the Panel has reviewed the Board's and Hobby Lobby's arguments as to the materiality or relevance of the rules contained in the handbooks, and after the Committee has responded in its reply brief, can the Court make an adequate judgment as to the relevance of the Settlement Agreement in which Hobby Lobby agreed to rescind the offending rules.

7. Furthermore, in order to clarify this submission, the Committee requests that the Court take judicial notice of the Complaint in this related case, as well as the Brief of the General Counsel which argued to the Administrative Law Judge that these rules were invalid. The Complaint is attached to a separate Request for Judicial Notice, as well as the General Counsel's brief filed concurrently.

8. The Request for Judicial Notice should be granted or referred to the Merits Panel for resolution.

Dated: December 30, 2016

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for COMMITTEE TO PRESERVE  
THE RELIGIOUS RIGHT TO ORGANIZE

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**CERTIFICATE OF SERVICE**

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on December 30, 2016, I electronically filed the foregoing **REPLY TO NLRB'S OPPOSITION TO REQUEST FOR JUDICIAL NOTICE AND SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE** with the United States Court of Appeal for the Seventh Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by CM/ECF system.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on December 30, 2016.

/s/ Karen Kempler  
Karen Kempler